

1 Annette W. Jarvis, Utah Bar No. 1649
 2 RAY QUINNEY & NEBEKER P.C.
 3 36 South State Street, Suite 1400
 4 P.O. Box 45385
 5 Salt Lake City, Utah 84145-0385
 Telephone: (801) 532-1500
 Facsimile: (801) 532-7543
 Email: ajarvis@rqn.com

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6 and

7 Lenard E. Schwartzer
 Nevada Bar No. 0399
 8 Jeanette E. McPherson
 Nevada Bar No. 5423
 9 Schwartzer & McPherson Law Firm
 2850 South Jones Boulevard, Suite 1
 10 Las Vegas, Nevada 89146-5308
 Telephone: (702) 228-7590
 Facsimile: (702) 892-0122
 12 E-Mail: bkfilings@s-mlaw.com

Proposed Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

15 In re:

16 USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

17 In re:

18 USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

Chapter 11

19 In re:

20 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,

Debtor.

**Jointly Administered Under
Case No. BK-S-06-10725 LBR**

21 In re:

22 USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

**DECLARATION OF KEN SCHMIDT IN
SUPPORT OF EMERGENCY MOTION FOR
ORDER TO COMPEL FIDELITY**

23 In re:

24 USA SECURITIES, LLC,

Debtor.

**NATIONAL TITLE INSURANCE
COMPANY TO MAKE DISBURSEMENTS
FROM LOAN FUNDS BEING HELD BY
FIDELITY AS DISBURSEMENT AGENT
(AFFECTS USA COMMERCIAL
MORTGAGE COMPANY)**

25 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA First Trust Deed Fund, LLC

Date: OST Requested

Time: OST Requested

SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Tel: (702) 228-7590 • Fax: (702) 892-0122

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Attorneys for Debtors

13
14 UNITED STATES BANKRUPTCY COURT
15
16

DISTRICT OF NEVADA

17 In re:

Case Nos. BK-S-06-10725 LBR

18 USA COMMERCIAL MORTGAGE
COMPANY,

Chapter 11

19 Date:

20 Time:

21 Debtor.

22
23 DECLARATION OF KEN SCHMIDT IN SUPPORT OF EMERGENCY MOTION FOR
24 ORDER TO COMPEL FIDELITY NATIONAL TITLE INSURANCE COMPANY TO
25 MAKE DISBURSEMENTS FROM LOAN FUNDS BEING HELD BY FIDELITY AS
DISBURSEMENT AGENT

26 Ken Schmidt, under penalties of perjury, hereby declares on this 8th day of May, 2006 that:
27
1. I am the Managing Member of Binford Medical Developers, LLC ("Binford
28 Medical").

1 2. Debtor USA Commercial Mortgage Company ("Debtor" or "USA") originated a
2 construction loan to Binford Medical Developers (the "Binford Medical Loan") in the principal
3 amount of \$8,375,000 on August 31, 2005.

4 3. The Binford Medical Loan is being used for the construction of a medical office
5 building in Indianapolis, Indiana (the "Medical Building Project"). This building is the first of
6 five medical office buildings that are planned for eventual construction by Binford Medical.

7 4. When the Binford Medical Loan was originated, an agreement was reached by
8 USA and Binford Medical with Construction Disbursement Services of Fidelity National Title
9 Insurance Company ("Fidelity") for Fidelity to act as the disbursement agent for the construction
10 loan funds for the Binford Medical Loan.

11 5. Fidelity is currently holding approximately \$1,990,000 in the loan proceeds from
12 the Binford Medical Loan.

13 6. Until the filing of USA's bankruptcy petition on April 13, 2006, Fidelity was
14 regularly disbursing the Binford Medical Loan proceeds pursuant to draw requests submitted to
15 Fidelity by the contractor on the Medical Building Project with the approval of Binford Medical
16 and USA.

17 7. The contractor on the Medical Building Project submitted Draw Request No. 7 in
18 the amount of \$275,200 to Fidelity on April 3, 2006. Draw Request No. 7 is for the balance of the
19 steel erection for the Medical Building Project.

20 8. Fidelity has not paid Draw Request No. 7. I have been advised that USA is ready
21 to approve the disbursement on Draw Request No. 7 as soon as Fidelity completes the inspection
22 of the progress of construction on the Medical Building Project that Fidelity performs as part of its
23 disbursement duties.

24 9. I have made repeated requests to Harry Westfall and Rita Bennett, Fidelity's
25 disbursement officers, for Fidelity to pay the April 3, 2006 draw request, but Fidelity has not done
26 so. Fidelity has advised me that it will honor Draw Request No. 7 and future draw requests upon
27 receipt of an order from the Bankruptcy Court.

28

1 10. The contractor on the Medical Building Project is rapidly approaching the deadline
2 for mechanic's liens to be filed by his unpaid subcontractors. The contractor has demanded that
3 the amount of the April 3, 2006 draw request be disbursed to him immediately, or the Medical
4 Building Project is in jeopardy of being shut down.

5 11. If the Medical Building Project is shut down and delayed, Binford Medical faces
6 the prospect of legal action and resulting legal fees from the contractor and the subcontractors as
7 well as from tenants who will be delayed in being able to move into the Medical Building Project.
8 Binford Medical's interest charges will also increase if the Medical Building Project is shut down
9 and delayed.

Respectfully submitted on May 8, 2006.


Ken Schmidt

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Tel: (702) 228-7590 • Fax: (702) 892-0122
Las Vegas, Nevada 89144-5308